IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1246 of 2002
In
SPECIAL CIVIL APPLICATION No. 9329 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE M.C.PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DEPUTY EXECUTIVE ENGINEER - Appellant(s)

Versus

DAHYABHAI HIRABHAI - Defendant(s)

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Appearance :
MR SIRAJ GORI AGP for Appellant(s) : 1,
MR KISHOR M PAUL for Defendant(s) :
1,==========

CORAM : HONOURABLE MR.JUSTICE B.J.SHETHNA
and
HONOURABLE MR.JUSTICE M.C.PATEL

Date : 15/09/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE B.J.SHETHNA)

The appellant-Deputy Executive Engineer, Quality

Control Sub-Division, Rajkot has challenged in this appeal the common judgment and order dated 12.12.2001 passed by the learned Single Judge of this court in Special Civil Application No.9329 of 2001 whereby the learned Single Judge partly allowed the writ petition filed by the appellant-petitioner and quashed and set aside the directions given by the Labour Court awarding 25% back wages to the respondent-workman, but maintained direction given by the Labour Court for reinstatement of the respondent-workman with continuity of service. While partly allowing the writ petition of the appellant-petitioner, the leaned Single Judge also directed the appellant-petitioner to reinstate the respondent-workman with continuity of service within one month from the date of the receipt of the writ of the order of the court or the certified copy of the judgment, whichever was earlier.

It is the case of the respondent-workman that he had served from 19.10.1984 to 29.8.1987 with the present appellant at the monthly salary of Rs.446/-. Up to 5.9.1986 he was discharging duties in control room and from 5.9.1986 till 19.8.1987 he was working as Chokidar in the office of the present appellant. On 29.8.1987 his services were orally terminated. Hence, a reference

being Reference (LCR) No.220 of 1989 was made before the Labour Court, Rajkot. Before the Labour Court, the defense of the present appellant was that the workman, on his own stopped coming to work with effect from 29.8.1987. The said defense was not believed by the Labour Court and after appreciating the evidence on record, the Labour Court came to the conclusion that he was orally terminated without following provisions of law. The Labour Court also found that after orally terminating the services of the workman as Chokidar one Hari Bhaga was employed in his place. Under, the circumstances, the Labour Court, by its impugned judgment and award dated 30.12.2000, declared the termination of the workman as illegal and ordered the present appellant to reinstate him in service, but with 25% back wages only, as according to the Labour Court, it was not possible for the workman to survive for all this period of 11 years. Aggrieved of this part of the award whereby he was denied 75% back wages, the workman approached this court by way of filing Special Civil Application No.7839 of 2001, whereas the appellant approached this court by way of Special Civil Application No.9329 of 2001 against the award passed by the Labour Court whereby he was ordered to be reinstated in service with 25% back wages.

As stated earlier, the learned Single Judge, by his common judgment and order dated 12.12.2001 dismissed the Special Civil Application No.7839 of 2001 filed by the respondent-workman claiming 75% back wages and partly allowed the Special Civil Application No.9329 of 2001 filed by the appellant-petitioner against awarding 25% back wages, but confirmed the impugned judgment and award passed by the Labour Court regarding reinstatement of respondent-workman, which is challenged in this appeal.

Learned AGP, Mr.Gori for the appellant relying on the judgment of the Hon'ble Supreme Court in case of ***MAHENDRA JAIN AND OTHERS versus INDORE DEVELOPMENT AUTHORITY AND OTHERS reported in (2005)1 SCC 639*** submitted that the respondent-workman was working as rojamdar, therefore, he has no right and when the laboratory was closed, then there was no question of his reinstatement. He, therefore, submitted that both the Labour Court as well as the learned Single Judge of this court committed an error in ordering reinstatement of the respondent-workman in service. In Mahendra Jain's case (supra) the Hon'ble Supreme Court has held that the person appointed as daily-wager has no right. There cannot be any quarrel with the principal laid down by the Hon'ble Supreme Court. The question in this case is as

to whether the respondent-workman was appointed as Rojamdar or not? When the Labour Court, on appreciation of evidence came to the conclusion that the respondent-workman was appointed on a monthly salary from 19.10.1984 and continuously worked till 29.8.1987, then in our considered opinion, the aforesaid judgment of the Hon'ble Supreme Court will not help the appellant in this case.

From the judgment of the learned Single Judge, it is also clear that after terminating the services of the respondent-workman other employees working in laboratories, who were junior to the respondent-workman were employed in other laboratories and some of the workmen were newly recruited. The Labour Court has also found the same. In that view of the matter, we are of the considered opinion that when the learned Single Judge of this court refused to exercise his extraordinary writ jurisdiction fully under Articles 226 and 227 of the Constitution of India in favour of the appellant-petitioner and refused to interfere with the order of reinstatement in service passed by the Labour Court, then there is no question of interference of this court in this Letters Patent Appeal.

In view of the above discussion, this appeal fails and is hereby dismissed with no order as to costs.

At this stage, Mr.Paul for the respondent brought to our notice that though civil Application for stay filed in this appeal by the present appellant against the reinstatement order was dismissed, the present appellant had not complied with the judgment and order passed by the learned Single Judge directing him to reinstate the respondent-workman in service within one month from the date of the receipt of the writ or the certified copy of the judgment, whichever is earlier, for a considerable time and the respondent-workman was reinstated in service only recently on 28.3.2005. However, Mr.Gori, learned AGP for the appellant submitted that the respondent-workman was reinstated in service subject to the result of the appeal. Be that as it may. Now, that the appeal is dismissed and that the order passed by the learned Single Judge of reinstatement of respondent-workman is specifically complied with, therefore, no further direction is required to be issued.

With these observations, this appeal is dismissed.

(B.J.SHETHNA, J.)

(M.C.PATEL, J.)

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